

D7

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536

**PUBLIC COPY**

File: LIN-01-042-50375 Office: Nebraska Service Center Date:

IN RE: Petitioner:  
Beneficiary:

APR 14 2003

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Myra L. Nascent*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of rigid polyvinylchloride fencing, doors, decking and window frames. It seeks to employ the beneficiary temporarily in the United States as a Rigid Polyvinylchloride (PVC) Extrusion Profile Tooling Specialist. The director determined that the petitioner had not established that the foreign entity had been doing business, or that the beneficiary had been or would be employed in the United States in a specialized knowledge capacity.

On appeal, counsel states that the Service erred in denying the petition.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The United States petitioner was established in 1997 and that it is a subsidiary of Mahjoub Profile, located in Damascus, Syria.

The first issue to be addressed in this proceeding is whether the U.S. entity is doing business.

Regulations at 8 C.F.R. § 214.2(l)(1)(ii)(H) state:

*Doing business* means the regular, systematic, and continuous provision of goods and/or services by a qualifying organization and does not include the mere presence of an agent or office of the qualifying organization in the United States and abroad.

The petitioner initially stated, in pertinent part, that:

**The Foreign Parent Company.** [REDACTED] (i.e. [REDACTED]) is a Syrian company with its principal place of business in Damascus, Syria. It was organized in 1993 and has been doing business ever since.

[REDACTED] uses a highly specialized, proprietary extrusion technology comprised of proprietary processes, tooling, equipment, and compounds (referred to collectively herein as the [REDACTED], to manufacture unplasticized (i.e. rigid) polyvinylchloride ("U-PVC"), which it molds into a wide variety of shapes or "profiles" for industrial applications, such as window frames, doors, fences, decks, siding, etc.

In a business bulletin dated July 31, 2000, the owner of [REDACTED] Profiles stated that:

Today, [REDACTED] is one of few worldwide in the U-PVC window systems industry which can offer a wide range of products simultaneously, conforming to the American and European standards. Our company covers the entire production and service spectrum, including, but not limited to window design, dies production, compounding, extrusion, window manufacturing and installation, with non-stop R&D in windows design, and windows manufacturing at all levels.

The director concluded that the foreign entity had not been engaged in "conducting a regular and systematic provision of goods and services," and was therefore, not doing business and denied the petition.

On appeal, counsel states, in pertinent part, that:

[REDACTED] is a substantial Syrian company organized in 1993 with its principal place of business in Damascus, Syria.

Counsel refers to evidence contained in the record (exhibits B through G) as confirmation that the foreign facility is conducting business. However, such evidence shows the operation of the US petitioner and a U.S. company named [REDACTED], not the foreign entity. Further, on appeal, counsel submits a photocopy of a brochure representing a Syrian Company named [REDACTED] which according to that brochure was founded in 1958. Counsel proffers this as evidence that [REDACTED] Profiles is conducting business. Counsel also submits a letter from the owner of the foreign entity, who indicates that he has prepared a "table detailing the customs and handling invoices for one (unnamed) company from December 1997 to July 2001." The owner submits copies of several invoices from the foreign entity to Peak Profile Company. The record does not contain any invoices from the foreign entity to any other entity.

Finally, counsel submits an unsworn letter purportedly from [named individual], an Economic Commercial Officer for the United States

Embassy, located in Damascus, Syria. [Named Individual] states, in pertinent part, that:

I am an economic/commercial officer at the American Embassy in Damascus, Syria. I have been working at the embassy since September 1999 and am familiar with Damascus and its business community, as well as the commercial and economic circumstances in Syria. In my professional capacity, I've met With [named individual, owner of the foreign entity] on numerous occasions, both at his offices, at the Embassy and at professional seminars and functions. To my knowledge, he is the only manufacturer of vinyl window and door frames in Syria and is a well-established businessman in the Damascus community. The Damascus Chamber Industry informed us that [REDACTED] is a privately-held company owned by [named individual] and that he is a member in good standing who is known and respected in the community.

In addition, I recently visited [named individual's] manufacturing facility. I had been to the site before, but this was my first in-depth tour of the factory buildings. There are three main departments spread over several buildings: (1) profile design and production (CAD design and machine production of dies/molds for injection and extrusion and actual production of profiles); (2) a reinforcement workshop; (3) an assembly workshop. All the sections were busy when I visited and the factory is full of all the things one expects to see at a working industrial facility: mechanical drawings and plans, scale models, molds/dies, raw materials, piles of parts waiting to be assembled stacks of finished goods waiting to be sent out.

I was told by the general manager that a total of about 150 employees work in all three areas on all shifts. Based on the level of activity and the number of workers I saw at their station, I have no reason to doubt this number.

The letter from the embassy employee notwithstanding, the record contains insufficient evidence that the foreign entity is "engaged in the provision of goods and services." The record contains no profit and loss statements, or gross sales and earnings figures for the foreign company. It is inconceivable that the foreign entity generates sufficient sales to sustain the employment of 150 individuals and have no "paperwork" reflecting the associated manufacture, sales and delivery of such goods or, associated pay records, copies of which should be readily available. This record is devoid of such evidence.

Further, the record contains conflicting information as to when the foreign entity actually began business. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582 (Comm. 1988). The evidence of record does not establish that the foreign entity is involved in the regular systematic, and continuous provision of goods and services. For this reason, the appeal will be dismissed.

The next issue in this proceeding is whether the beneficiary has been or will be employed in a specialized knowledge capacity.

Title 8, Code of Federal Regulations, part 214.2(l)(1)(ii)(D) provides that:

*Specialized knowledge* means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides:

An alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

In establishing the business relationships associated with this petition, the petitioner submitted an initial statement reflecting, in pertinent part, that:

In 1996, as a part of its plan for international marketing of its products and technology, [REDACTED] entered into a business relationship with [REDACTED], "dba" [REDACTED] a Utah Corporation, wherein [REDACTED] agreed to purchase the [REDACTED] and use it to produce and market [REDACTED] profiles in the United States. At a cost of over \$5 million, [REDACTED] has to date purchased roughly sixty precision state-of-the-art dies (up to \$60,000 each), eleven extruders (up to

\$260,000 each), calibrators, vacuum boxes, microprocessor controls, mixing machines, grinding equipment, cooling systems, etc. and procured a plant in Woods cross, Utah. It began producing profiles in 1997, and after recouping its start-up costs has been profitable ever since. It currently has approximately fifty full time employees. In 1999, it grossed over \$5.6 million in sales. This year, it expects to gross \$7 to \$8 million. Next year, it hopes to gross \$10 to \$15 million.

In describing the specialized technology involved, the petitioner's president, [REDACTED] stated, in pertinent part, that:

We produce rigid or "unplasticized" PVC in a way that achieves much higher levels of strength, uniformity, density, and durability than any competing product. We achieve this by using specially formulated compounds, unique extrusion equipment, and processes that differ from our competitors. I (the petitioner) should stress that these are all proprietary in nature - I (the petitioner) invented them, they are unique in the industry, they all have proprietary components and circuitry, they are only available through companies I own, and they can only be serviced by persons who are thoroughly trained and familiar with them in both theory and practice.

The technology is based on a series of processes whereby specially formulated compounds are mixed, heated, and "extruded" (i.e. molded into long strips with predetermined profiles) using highly specialized tooling, the main components of which are proprietary dies, calibrators, and vacuum boxes. Unlike our competitors' processes, which are subject to gravitational forces, we use a vacuum process that enables the material to be molded in a completely different fashion. As the material flows through the equipment, it is monitored every minute [sic] using propriety computer technology, which enables us to know at any given point the exact thickness and density of the material at any point in the material [sic], and based on the technical feedback from the equipment we can make micro adjustments to the compounds and/or equipment to achieve desired qualities. The entire process is continuous and operated around the clock.

The petitioner's president further stated, in pertinent part, that:

I train my tooling specialists for three years, during which time they master the processes and learn all of the pieces of equipment, how they each function, how they are

tuned, serviced, and integrated into production, their internal components, how to repair the various malfunctions that occur, how to adjust them to effect the shape, size, and density of U-PVC profiles, how to monitor what is happening to the compounds during the manufacturing process, how to fabricate critical parts, how the proprietary compounds respond to various types of adjustments, how to set up a production line, and how to monitor the production process using computerized data generated as the material flows through the equipment.

It must be noted that in response to a Service request for additional evidence, the petitioner submitted a letter from a manufacturer's representative, who indicated that [the] petitioner's extrusion lines are computerized and that the technicians monitor these computers in order to maintain consistent quality of the profile during the extrusion process. The representative further stated that the computers enable the technicians to make precise computer assisted micro-adjustments of internal pressures, temperatures, and flow of material during the extrusion process.

On appeal, counsel states that the [redacted] a United States Company, has spent many millions to purchase [redacted] and that the president of [redacted] has estimated that it has already lost seven million dollars because of the delay in approval of the petition. Counsel further states, in pertinent part, that:

Few individuals actually succeed in mastering the Mahjoub technology. Of ten individuals who began training in the United States at [redacted] only one has reached the position and skill level necessary to be a Tooling Specialist. Indeed, only between seven and ten percent of the [redacted] workforce is classified as a Tooling Specialist, indicating the highly complicated nature of the trade.

On review, the record is not persuasive in demonstrating that the beneficiary has been or will be employed in a capacity involving specialized knowledge of the petitioner's products and their application in international markets. According to the record, this beneficiary was hired by the foreign entity in 1994 as a tooling specialist trainee, a position he held for three years after which he became a tooling specialist. The proposed duties with the petitioner, as simply stated, are essentially that of a skilled worker.

Counsel argues that the beneficiary is one of the few employees possessing an in depth knowledge of the [redacted] which is

necessary to enhance the profitability of a United States company through his services to the U.S. entity. The record indicates, however, that the proposed employment, as stated, "tooling specialist" does not require the advanced level of knowledge or expertise claimed. None of the beneficiary's summarily described duties either abroad or in the proposed position in the United States have been shown to require special or advanced knowledge. The record demonstrates that the technology already exists with the United States customer as evidenced by the fact that, at least one individual has qualified to perform the required duties through the customers in-house training program. Further, the record contains conflicting statements as to [REDACTED] employee needs as the record shows that the company has realized above average growth, not indicating that it has lost revenue as claimed. Accordingly, the record is not persuasive that the petitioner has established that the beneficiary has specialized knowledge, or that he would be employed in a capacity involving specialized knowledge. In fact, the beneficiary's knowledge of the company's products, or of the processes and procedures of the foreign company's technological expertise, has not been shown to be substantially different from, or advanced in relation to other companies that provide computer enhanced technological support to the extrusion process. It is significant that, although the training period is espoused to be advanced and highly technical in nature, there is no evidence that the trainees receive any highly skilled training such as computer training, even though the technology is computer based. It is therefore concluded that much of the technology is already computerized and requires only periodic adjustments to an already existing program.

Counsel further contends that the director's decision does not consider statutory and regulatory definitions of "specialized knowledge." The plain meaning of the term "specialized knowledge" is knowledge or expertise beyond the ordinary in a particular field, process, or function. Contrary to counsel's argument regarding the Service's purported overly restrictive requirements, mere familiarity with an organization's product or service does not constitute special knowledge under section 214(c)(2)(B) of the Act.

The beneficiary's generally described employment fails to establish that the beneficiary possesses or has used in the performance of his employment, skills that qualify as or requisite specialized knowledge. Counsel argues that the beneficiary's training and experience have given him knowledge which is special because it is specific to [REDACTED]. The petitioner states an employee possessing specialized knowledge of the foreign parent[s] products and operating procedures is critical to the profitability of a U.S. entity. However, logic dictates that job training at any company teaches primarily procedures that are predominately germane to that organization. The record contains no detailed description of the specialized in-house training that the beneficiary received from



the organization. Furthermore, in-house training, as such, does not automatically qualify as specialized knowledge as counsel would suggest. The petitioner has not furnished evidence sufficient to demonstrate that the beneficiary's duties involve advanced knowledge of the petitioner's product, processes, or procedures, as opposed to the skills required to maintain such procedures operationally. Contrary to counsel's argument, mere familiarity with an organization's product or service does not constitute special knowledge under section 214(c)(2)(B) of the Act. The record as presently constituted is not persuasive in demonstrating that the beneficiary has specialized knowledge or that he has been and will be employed primarily in a specialized knowledge capacity. For this reason, the petition may not be approved.

Beyond the decision of the director, the record does not contain evidence that the petitioner, which purportedly was founded in 1997 has been or is doing business in the United States. As the appeal will be dismissed on the grounds discussed, this issue need not be addressed further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.